

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

KIMBERLY MICHELLE PIERCE, as)
Personal Representative and next of kin to)
her father, THOMAS AVERY RAVEN)
deceased, and as Personal Representative)
of the Estate of Thomas Avery Raven,)
Plaintiff,) CIVIL ACTION FILE NO.:
v.) 1:21-CV-01814-MLB
KIA MOTORS AMERICA, INC.,)
KIA MOTORS MEXICO, S.A. de C.V.,)
KIA GEORGIA, INC.,)
HYUNDAI MOTOR AMERICA, INC.,)
HYUNDAI MOTOR GROUP,)
HYUNDAI MOTOR CORPORATION,)
ZF TRW AUTOMOTIVE HOLDINGS)
CORPORATION, ZF ACTIVE SAFETY)
US INC., TAKATA RESTRAINT)
SYSTEMS, INC., JOYSON SAETY)
SYSTEMS, KEY SAFETY SYSTEMS,)
AND ABC, INC.,)

Defendants.

**CONSENT MOTION TO DISMISS CERTAIN DEFENDANTS AND
ADD A PROPER DEFENDANT**

COME NOW Plaintiff and Defendants Kia America, Inc., formerly known as Kia Motors America, Inc., Kia Motors Mexico, S.A. de C.V., Kia Georgia, Inc., Hyundai Motor America, Inc., Hyundai Motor Group, and Hyundai Motor

Company, incorrectly identified as Hyundai Motor Corporation, and pursuant to Fed. R. Civ. Pro. 21 respectfully request this Court enter an order dismissing Kia Motors Mexico, S.A. de C.V., Kia Georgia, Inc., Hyundai Motor America, Inc., Hyundai Motor Group, and Hyundai Motor Company, incorrectly identified as Hyundai Motor Corporation without prejudice. The district court “generally has discretion to determine whether to allow dropping of parties” Bennick v. Boeing Co., 427 Fed. Appx. 709, 712 (11th Cir. 2011) (citing Fritz v. American Home Shield Corp., 751 F.2d 1152, 1154 (11th Cir.1985)). In this case, the moving parties hereby request the Court exercise this discretion and enter an order dismissing them without prejudice. Plaintiff’s claims against the other named defendants will proceed unaffected.

In exchange for Plaintiff’s agreement to dismiss these entities without prejudice, Kia Motors Mexico, S.A. de C.V., Kia Georgia, Inc., Hyundai Motor America, Inc., Hyundai Motor Group, and Hyundai Motor Company, incorrectly identified as Hyundai Motor Corporation agree they will not raise the defense of the statute of limitations if Plaintiff seeks to add them as parties to this litigation in the future. Further, in such an event, and solely for the purposes of this litigation, Kia Motors Mexico, S.A. de C.V., Kia Georgia, Inc., Hyundai Motor America, Inc., Hyundai Motor Group, and Hyundai Motor Company, incorrectly identified as

Hyundai Motor Corporation agree to accept service of the Complaint and to not require the formalities of service under Federal Rule of Civil Procedure 4(d) or the Hague Convention. Such an agreement to accept service is limited solely to this case and does not amount to a waiver of any other defenses available, including the defense of personal jurisdiction. Fed. R. Civ. Pro. 4(d)(5). Kia Corporation and Kia America, however, will not challenge Personal Jurisdiction for purposes of this action only and will not raise Personal Jurisdiction defenses in the above styled action.

Plaintiff hereby further requests, pursuant to Fed. R. Civ. Pro. 15 and 21, an Order from this Court allowing Plaintiff to amend the Complaint to add Kia Corporation as a party defendant. Fed. R. Civ. Pro. 15 allows for amendment of a pleading “with the opposing party’s written consent or with the court’s leave” and further notes “the court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2); see also Peak v. Greyhound Lines, Inc., 2016 WL 9308543, at *1 (N.D. Ga. 2016). In her Complaint, Plaintiff has alleged claims of design defect related to the subject Kia Forte XL. Kia Corporation designed this vehicle and is a proper party to this action, although Kia Corporation denies all liability for any claims asserted by Plaintiff. The Complaint was filed on April 30, 2021 and as of the date of filing of this Motion, only one party has filed an answer and no discovery

has been conducted. As such, there will be no prejudice or delay in adding Kia Corporation as a defendant. Kia Corporation and Kia America, Inc., formerly known as Kia Motors America, Inc., by and through the undersigned counsel of record, consent to this request pursuant to the following terms:

1. Kia Corporation agrees to accept service of the Complaint and to not require the formalities of service under Federal Rule of Civil Procedure 4(d). Kia Corporation further agrees not to assert its rights under the Hague Convention for the purposes of this action only and will not raise the defense of improper service or improper service of process in the above styled action.
2. For the purposes of this matter only, Kia Corporation agrees that the amendment adding Kia as a party will relate back to the date of filing of the original complaint, April 30, 2021.
3. Kia Corporation and Kia America, Inc., a co-defendant in this action, will each have an additional sixty (60) days to that permitted under the Federal Rules of Civil Procedure (*i.e.*, a total of 90 days) to serve plaintiffs with objections and/or responses to any and all discovery requests propounded by plaintiffs in this action. The additional time will allow the domestic entity, Kia America, Inc., to properly coordinate its responses with those

of the foreign entity, Kia Corporation. Kia America, Inc. and Kia Corporation do not waive the right to assert objections to discovery propounded on them, and expressly preserve the right to oppose, or seek relief in connection with, any discovery requests served on them.

4. Plaintiff will provide at least ninety (90) days written notice for any deposition of Kia Corporation or its personnel and for any deposition of Kia America, Inc. or its personnel. Plaintiff will coordinate a date that is convenient for all attorneys and defendants, giving due consideration to any restrictions and limitations imposed in response to the COVID-19 pandemic.
5. Any deposition of Kia Corporation or its personnel located in the Republic of Korea for this action will proceed in Seoul, Republic of Korea, or by video-conference during normal business hours in the Republic of Korea with the witness and their counsel permitted to appear in the Republic of Korea, giving due consideration to any restrictions and limitations imposed in response to the COVID-19 pandemic. Plaintiff may proceed to conduct the deposition by video-conference at their discretion. The court reporter may be located within the United States and the oath may be administered remotely via video link.

6. Any deposition of Kia America, Inc. or its personnel will proceed in Orange County or Los Angeles, California, at a place to be determined by Kia America, Inc., or by video-conference during normal business hours in California with the witness and their counsel permitted to appear in California, giving due consideration to any restrictions and limitations imposed in response to the COVID-19 pandemic. Plaintiff may proceed to conduct the deposition by video-conference at their discretion. The court reporter may be located elsewhere in the United States and the oath may be administered remotely via video link.

7. If any notarization is required for any discovery response, a formal notarization is not required. In lieu, Kia America, Inc. and Kia Corporation shall stipulate that their respective signatures served and/or filed in this matter carry all of the responsibilities and penalties that pertain to the type of notarized signature required for such document.

Based on the foregoing, the moving parties respectfully request this Court enter an Order dismissing Kia Motors Mexico, S.A. de C.V., Kia Georgia, Inc., Hyundai Motor America, Inc., Hyundai Motor Group, and Hyundai Motor Company, incorrectly identified as Hyundai Motor Corporation without prejudice

and adding Kia Corporation as a defendant pursuant to the terms outlined above. A proposed Order is attached for the Court's convenience.

This 11th day of June, 2021.

CONSENTED AND AGREED TO BY:

WILLIAMS & ASSOCIATES LAW FIRM, P.C.

Rita Williams (with express permission by Myrece Johnson)

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Attorneys for the Moving Defendants

7.1 CERTIFICATE OF COMPLIANCE

I hereby certify that this document was prepared in Times New Roman font, 14 point, and complies with Local Rules 5.1(C) and 7.1(D), ND Ga.

This 11th day of June, 2021.

SWIFT, CURRIE, McGHEE & HIERS, LLP

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CERTIFICATE OF SERVICE

I certify that on this day I served a copy of **CONSENT MOTION TO DISMISS CERTAIN DEFENDANTS AND ADD A PROPER DEFENDANT** upon all parties via the Court's electronic filing system and via email as follows:

Rita T. Williams
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This 11th day of June, 2021.

SWIFT, CURRIE, McGHEE & HIERS, LLP

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